FILE COPY

Supreme Court, U. S.
FILED
DEC 7 1945
CHARLES ELMORE CROPLEY
CLERK

No. 123

In the Supreme Court of the United States

OCTOBER TERM, 1945

CARL B. WILLIAMS, PETITIONER

v.

UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE UNITED STATES

INDEX

	Page
Opinion below	1
Jurisdiction	1
Question presented	2
Statutes involved	2
Statement	4
Summary of argument	5
Argument:	
While the judgment of the court below finds support in the literal language of Section 289 of the Criminal Code, there are other and stronger considerations which make against the propriety of that court's construction of the section	6
A. The Assimilative Crimes Act	9
B. The Federal Carnal Knowledge Statute	17
C. The Government's Position	18

CITATIONS

Cases:	
Donnelly v. *United States*, 228 U. S. 243	7
Franklin v. *United States*, 216 U. S. 559	9, 14
Johnson v. *Yellow Cab Co.*, 321 U. S. 383	9
United States v. *American Trucking Ass'ns*, 310 U. S. 534	9
United States v. *McGowan*, 302 U. S. 535	7
United States v. *Paul*, 6 Pet. 141	9, 15
United States v. *Pelican*, 232 U. S. 442	7
United States v. *Press Publishing Co.*, 219 U. S. 1	9
Statutes:	
Act of April 30, 1790, 1 Stat. 112	11
Act of March 3, 1825, 4 Stat. 115	12, 14, 15
Act of April 5, 1866, 14 Stat. 12	15
Act of July 7, 1898, 30 Stat. 717	15
Act of February 9, 1889, c. 120, 25 Stat. 658	17
Act of March 4, 1909, 35 Stat. 1088	15
Act of June 15, 1933, 48 Stat. 152	15
Act of June 20, 1935, 49 Stat. 394	15
Act of June 6, 1940, 54 Stat. 234	15
Revised Statutes of 1878, Section 5391	15
Revised Statutes, Section 2145, 25 U. S. C. 217	2
Criminal Code, 18 U. S. C. 451, 458, 468:	
Section 272	2
Section 279	3, 6, 7, 8, 9, 17
Section 289	3, 6, 9, 14, 15, 20
Arizona Code, 1939, Section 43-4901	4, 8

Miscellaneous:

	Page
Annals of Congress, 17th Cong., 2d sess., 1822–1823	12
Annals of Congress, 18th Cong., 1st sess., 1823–1824	12
19 Cong. Rec. 6501	18
20 Cong. Rec. p. 997	18
77 Cong. Rec. 5530–5532	13, 16
Gales & Seaton, Vol. 1	12, 13
House Executive Doc. No. 14, 53d Cong., 1st sess	16
H. Rep. No. 2, 60th Cong., 1st sess	15
H. Rep. No. 56, 73d Cong., 1st sess	16
H. Rep. No. 1022, 74th Cong., 1st sess	16
H. Rep. No. 1584, 76th Cong., 3d sess	16, 17
S. Rep. No. 1259, 55th Cong., 2d sess	16
S. Rep. No. 1699, 76th Cong., 3d sess	16, 17
Life and Letters of Joseph Story, 1851, Vol. 1, p. 297	11

In the Supreme Court of the United States

OCTOBER TERM, 1945

No. 123

CARL B. WILLIAMS, PETITIONER

v.

UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE UNITED STATES

OPINION BELOW

The majority (R. 41–46) and dissenting (R. 46–47) opinions in the circuit court of appeals are reported at 148 F. 2d 960.

JURISDICTION

The judgment of the circuit court of appeals was entered March 30, 1945 (R. 47), and a petition for rehearing was denied May 14, 1945 (R. 48). The petition for a writ of certiorari was filed June 11, 1945 and was granted October 8, 1945 (R. 49). The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial

Code, as amended by the Act of February 13, 1925. See also Rules XI and XIII of the Criminal Appeals Rules promulgated by this Court May 7, 1934.

QUESTION PRESENTED

Within an Indian Reservation over which the United States has jurisdiction, petitioner had carnal knowledge of an Indian girl over sixteen but under eighteen years of age. Section 279 of the Criminal Code makes it an offense carnally to know a girl under the age of sixteen years. The question presented is whether, by virtue of the assimilative crimes act (Section 289 of the Criminal Code), petitioner committed the offense of statutory rape as defined by Section 43-4901 of the Arizona Code, which fixes the age of consent at eighteen years.

STATUTES INVOLVED

Section 2145 of the Revised Statutes (25 U. S. C. 217) provides:

> Except as to crimes the punishment of which is expressly provided for in [title 25], the general laws of the United States as to the punishment of crimes committed in any place within the sole and exclusive jurisdiction of the United States, except the District of Columbia, shall extend to the Indian country.

Section 272 of the Criminal Code (18 U. S. C. 451, c. 11) provides in part:

> The crimes and offenses defined in this

chapter shall be punished as herein prescribed:

* * * * *

Third. When committed within or on any lands reserved or acquired for the use of the United States, and under the exclusive or concurrent jurisdiction thereof, or any place purchased or otherwise acquired by the United States by consent of the legislature of the State in which the same shall be, for the erection of a fort, magazine, arsenal, dockyard, or other needful building.

Section 279 of the Criminal Code (18 U. S. C. 458, c. 11) provides:

Whoever shall carnally and unlawfully know any female under the age of sixteen years, or shall be accessory to such carnal and unlawful knowledge before the fact, shall for a first offense, be imprisoned not more than fifteen years, and for a subsequent offense be imprisoned not more than thirty years.

Section 289 of the Criminal Code, as amended, commonly known as the assimilative crimes act (18 U. S. C. 468, c. 11), provides:

Whoever, within the territorial limits of any State, organized Territory, or district, but within or upon any of the places now existing or hereafter reserved or acquired, described [in section 272 of the Criminal Code] shall do or omit the doing of any act or thing which is not made penal by

> any laws of Congress, but which if committed or omitted within the jurisdiction of the State, Territory, or district in which such place in situated, by the laws thereof in force on February 1, 1940, and remaining in force at the time of the doing or omitting the doing of such act or thing, would be penal, shall be deemed guilty of a like offense and be subject to a like punishment.

Section 43–4901 of the Arizona Code, 1939, provides in part:

> * * * Rape is an act of sexual intercourse accomplished with a female, not the wife of the perpetrator, under any of the following circumstances:
>
> Where the female is under the age of eighteen [18] years;
>
> * * * * *
>
> * * * Rape is punishable by imprisonment in the state prison for life or for any term of years not less than five [5].

STATEMENT

On March 23, 1944, petitioner was indicted in the United States District Court for the District of Arizona in one count charging that on December 10, 1943, within the limits of the Colorado River Indian Reservation in the District of Arizona, he carnally knew Geraldine Rose Ameelyenah, a female Indian who was under the age of eighteen years and who was not his wife (R. 2–3). Petitioner was convicted after a jury trial (R. 4) and

was sentenced to imprisonment for a term of five years (R. 12–13). Upon appeal to the Circuit Court of Appeals for the Ninth Circuit, the judgment was affirmed, one judge dissenting (R. 41–47).

The evidence in support of the conviction, the sufficiency of which petitioner does not dispute, may be briefly summarized as follows:

Petitioner is a member of the Caucasian race. He was born in 1898 and is married and has a son thirteen years of age. (R. 26–27.) Geraldine Rose Ameelyenah is a Mohave Indian who lives on the Colorado River Indian Reservation in Arizona. She became sixteen years of age on August 8, 1943. (R. 23–24.) Petitioner established a Nazarene Church on the reservation and "did missionary work as a Nazarene preacher" (R. 23–24). Geraldine was his assistant in publishing the church newspaper (R. 24). On the evening of December 3, 1943, after they had worked on the newspaper, petitioner drove Geraldine in his pick-up truck to an isolated side road on the Indian reservation and while they were parked there she submitted to sexual intercourse with him (R. 25).

SUMMARY OF ARGUMENT

The judgment of the circuit court of appeals is supported by a literal reading of the assimilative crimes act. Since the act of having carnal knowledge of a girl over sixteen but under

eighteen years of age is not covered by Section 279 of the Criminal Code it is an act not made penal by any laws of Congress. But if we go beyond the literal language of the statute the soundness of the construction adopted by the court below is subject to serious doubt.

The legislative history of Section 279 of the Criminal Code, making it an offense carnally to know any girl under sixteen years of age, shows that Congress adopted that age limit with full knowledge that it was lower than the age limit fixed by some state laws. Congress not only found that a girl under sixteen is legally incapable of giving consent, but it must also have concluded that a girl sixteen or over, as was petitioner's victim, is capable of consenting. In addition, the history of Section 289 of the Criminal Code, the assimilative crimes act, demonstrates that Congress intended it to be applicable simply to those offenses concerning which it had not legislated. In these circumstances, we think the considerations in support of petitioner's position outweigh those in support of the judgment of the circuit court of appeals.

ARGUMENT

WHILE THE JUDGMENT OF THE COURT BELOW FINDS SUPPORT IN THE LITERAL LANGUAGE OF SECTION 289 OF THE CRIMINAL CODE, THERE ARE OTHER AND STRONGER CONSIDERATIONS WHICH MAKE AGAINST THE PROPRIETY OF THAT COURT'S CONSTRUCTION OF THE SECTION

The assimilative crimes act (Section 289 of the Criminal Code, *supra*, p. 3) provides that within

defined areas of federal jurisdiction,[1] any person who does an act "which is not made penal by any laws of Congress," but which would be a violation of the law of the state if it had jurisdiction, shall be deemed to have committed the offense described by state law and shall be punished as provided by the state law. It is undisputed that petitioner's act occurred in an area within federal jurisdiction and that, since the victim was under 18 years of age, it would have been a violation of Arizona law if it had occurred within the state's jurisdiction. The sole question presented, therefore, is whether carnally knowing a girl over 16 but under 18 years of age is an "act * * * which is not made penal by any laws of Congress," as is required for coverage by the assimilative crimes act.

The problem stems from the fact that Section 279 of the Criminal Code makes it a penal offense "carnally and unlawfully [to] know any female under the age of sixteen years." It is petitioner's view that Congress has made the act of carnally knowing a girl of tender years a crime and that, in defining the offense, it has fixed the age of consent at sixteen years. He argues, therefore, and the

[1] By virtue of 25 U. S. C. 217 the general laws of the United States relating to the punishment of crimes committed in any place within its exclusive jurisdiction are extended to "the Indian country." An Indian Reservation is a part of the Indian country. *Donnelly* v. *United States*, 228 U. S. 243, 269. *United States* v. *Pelican*, 232 U. S. 442, 445, 449; cf. *United States v. McGowan*, 302 U. S. 535, 539.

dissenting judge below agreed, that there is no room in this case for resort to the Arizona definition of statutory rape pursuant to the assimilative crimes act. The majority of the court below accepted the view urged in that court by the Government, that since the act of carnally knowing a girl over 16 but under 18 years of age, with her consent, is not made penal by any law of Congress, the assimilative crimes act is applicable and petitioner therefore committed a federal offense as defined by § 43–4901 of the Arizona Code.

So far as we know, the question is one of first impression. We think that the judgment of the circuit court of appeals is supported by a literal reading of the assimilative crimes act. By its terms the statute applies where an "act or thing" is done "which is not made penal" by any laws of Congress. The argument in support of the judgment is that while Congress, by Section 279 of the Criminal Code, has made penal the act of having carnal knowledge of a girl under sixteen years of age, it has not made penal the commission of such an act with a girl sixteen years or older. Since Geraldine had passed her sixteenth birthday, there was no law of Congress making petitioner's act penal. Accordingly, so the argument goes, the assimilative crimes act applies to this case and reference may be had to Arizona law to punish petitioner's act as a federal offense.

While the literal language of the statute permits this construction, the legislative histories of

both Sections 279 and 289 of the Criminal Code clash with it. Since this data is an aid to interpretation to which, it would seem, this Court may refer in testing the propriety of the construction adopted by the court below (*United States* v. *American Trucking Ass'ns,* 310 U. S. 534, 544), we turn to the legislative background of those statutes.

A. *The Assimilative Crimes Act.*—Section 289 of the Criminal Code has had a long legislative history, which previously has been considered by this Court, and which furnished the basis for the Court's characterization of the statute in *United States* v. *Press Publishing Co.,* 219 U. S. 1, 9–10,[2] as follows:

> It is certain, on the face of the quoted section, that it exclusively relates to offenses committed on United States reservations, etc., which are "not provided for by any law of the United States," and that as to such offenses the state law, when they are by that law defined and punished, is adopted and made applicable. That is to say, while the statute leaves no doubt where acts are done on reservations which are expressly prohibited and punished as crimes by a law of the United States, that law is dominant and controlling; yet, on the other hand, where no law of the United States has expressly provided for the punish-

[2] See also *Franklin* v. *United States,* 216 U. S. 559; *Johnson* v. *Yellow Cab Co.,* 321 U. S. 383, 393 (dissent); and see *United States* v. *Paul,* 6 Pet. 141.

ment of offenses committed on reservations, all acts done on such reservations which are made criminal by the laws of the several States are left to be punished under the applicable state statutes. When these results of the statute are borne in mind it becomes manifest that Congress, in adopting it, sedulously considered the twofold character of our constitutional government, and had in view the enlightened purpose, so far as the punishment of crime was concerned, to interfere as little as might be with the authority of the States on that subject over all territory situated within their exterior boundaries, and which hence would be subject to exclusive state jurisdiction but for the existence of a United States reservation. In accomplishing these purposes it is apparent that the statute, instead of fixing by its own terms the punishment for crimes committed on such reservations which were not previously provided for by a law of the United States, adopted and wrote in the state law, with the single difference that the offense, although punished as an offense against the United States, was nevertheless punishable only in the way and to the extent that it would have been punishable if the territory embraced by the reservation remained subject to the jurisdiction of the States. * * *

Section 289 had its origin in the recommendations of Mr. Justice Story early in the Nineteenth Century. The first federal crimes act, the

act of April 30, 1790 (1 Stat. 112), defined only the most serious offenses. As a result, many persons who committed acts in areas of federal jurisdiction which would have been criminal if state jurisdiction attached, escaped punishment. This evil was recognized by Mr. Justice Story, who thought it could be remedied by giving the United States Courts general jurisdiction to punish crimes committed against the Federal Government. In reference to a section of a bill which he prepared to this effect, Mr. Justice Story said (*Life and Letters of Joseph Story*, 1851, Vol. 1, p. 297; see also pp. 293–301):

> This is the most important section of the whole bill. The criminal code of the United States is singularly defective and inefficient. There are, in the statutes of the United States, prohibitions against doing some acts, and mandates to do others, which have no penalties annexed to them. But this is a very small grievance. Few, very few, of the practical crimes, (if I may so say,) are now punishable by statutes, and if the courts have no general common law jurisdiction, (which is a vexed question,) they are wholly dispunishable. The State ~~Courts have no~~ jurisdiction of crimes committed on the high seas, or in places ceded to the United States. Rapes, arsons, batteries, and a host of other crimes, may in these places be now committed with impunity. Surely, in naval yards, arsenals, forts, and dockyards, and

> on the high seas, a common law jurisdiction is indispensable. Suppose a conspiracy to commit treason, in any of these places, by civil persons, how can the crime be punished? These are cases where the United States have an exclusive local jurisdiction. And can it be less fit that the Government should have power to protect itself in all other places where it exercises a legitimate authority? That Congress have power to provide for all crimes against the United States, is incontestable. * * *

Thereafter, on February 10, 1823, James Buchanan, then a member of the Judiciary Committee of the House of Representatives (Webster was its chairman), submitted a resolution that the committee be instructed to consider whether there are crimes "not now punishable by law, to which punishments ought to be affixed," so that legislation could be considered by the succeeding Congress. The resolution was adopted. Annals of Congress, 17th Cong., 2d sess., 1822–1823, p. 929.

At the second session of the next Congress,[3] Webster sponsored a bill which became the act of March 3, 1825. The bill defined those criminal

[3] At the first session a bill providing for the assimilation of the criminal laws of the States was passed by the Senate, but apparently it was not acted upon by the House of Representatives. Annals of Congress, 18th Cong., 1st Sess., 1823–1824, pp. 528, 592, 762; see also Gales & Seaton, Vol. I, p. 338.

offenses which occurred with some regularity, such as arson, murder, rape, theft, extortion and perjury, and it provided in Section 3 (See Gales & Seaton, Vol. I, p. 152):

> *And, be it further enacted* That, if any offence shall be committed in any of the places aforesaid, the punishment of which offence is not specially provided for by any law of the United States, such offence shall, upon a conviction in any court of the United States having cognizance thereof, be liable to, and receive the same punishment as the laws of the state in which such fort, dock-yard, navy-yard, arsenal, armory, or magazine, or other place, ceded as aforesaid, is situated, provide for the like offence when committed within the body of any county of such state.

The function of Section 3 was made explicit by Webster during consideration of the bill by the House of Representatives, sitting as a committee of the whole. Mr. Wickliffe had objected to Section 3 on the ground that it amounted to adoption by one sovereign of the laws of another without any knowledge of what they were, and that it made the law of the United States vary according to the laws of the various states.[4] Webster replied (Gales & Seaton, Vol. I, p. 338):

[4] Compare the criticism of Section 289 of the Criminal Code by Senators Black and Johnson when the 1933 amendment of Section 289 was before the Senate. 77 Cong. Rec. 5530–5532.

> As to the third section, it must be obvious, that, where the jurisdiction of a small place, containing only a few hundreds of people, (a navy yard for instance,) was ceded to the United States, some provision was required for the punishment of offenses; and as, from the use to which the place was to be put, some crimes were likely to be more frequently committed than others, the committee had thought it sufficient to provide for these, and then to leave the residue to be punished by the laws of the state in which the yard, &c. might be. He [Webster] was persuaded that the people would not view it as any hardship, that the great class of minor offenses should continue to be punished in the same manner as they had been before the cession.

We think it fairly evident from this early history of Section 289, and particularly from Webster's statement, that Section 3 of the act of 1825 had for its object the establishment of a code of criminal laws for areas of federal jurisdiction without making it necessary for Congress to legislate specifically as to each crime. Thus, Congress defined the more important and more frequent offenses and left the remainder to definition by state law. Section 3, we think, was designed to come into play in respect of those crimes concerning which Congress did not undertake to legislate specifically. As the Court said in *Franklin v. United States*, 216 U. S. 559, 568, "by this act

Congress adopted for the government of the designated places, under the exclusive jurisdiction and control of the United States, the criminal laws then existing in the several States within which such places were situated, in so far as said laws were not displaced by specific laws enacted by Congress."

In *United States* v. *Paul*, 6 Pet. 141, this Court held that only the state laws in effect when Section 3 was enacted were operative in areas of federal jurisdiction. Accordingly, from time to time and with minor changes not material here, principally to bring it up to date, Section 3 of the Act of March 3, 1825, has been reenacted. It is now Section 289 of the Criminal Code, as amended. Act of April 5, 1866, 14 Stat. 12, 13; § 5391 of the Revised Statutes of 1878; act of July 7, 1898, 30 Stat. 717; act of March 4, 1909, 35 Stat. 1088, 1145; act of June 15, 1933, 48 Stat. 152; act of June 20, 1935, 49 Stat. 394; act of June 6, 1940, 54 Stat. 234.

For the most part the reenactments were passed with little discussion in Congress as to the meaning of Section 289, at least in so far as it relates

---

[6] The use of the term "offence" was abandoned when the Criminal Code was enacted, because, in the words of the House Report, "an act which is not forbidden by law and to the commission of which no penalty is attached in no legal sense can be denominated an 'offense.' The section has therefore been rewritten so as to correctly express what Congress intended when it enacted the section referred to." H. Rep. No. 2, Part 1, p. 23 (Section 286), 60th Cong., 1st sess.

to the problem of this case. See, generally, Senate Rep. No. 1259, 55th Cong., 2d sess; House Executive Doc. No. 14, 53d Cong., 1st sess; H. Rep. No. 56, 73d Cong., 1st sess; H. Rep. No. 1022, 74th Cong., 1st sess; S. Rep. No. 1699 and H. Rep. No. 1584, 76th Cong., 3d sess. The 1933 amendment, however, evoked some discussion on the floor of the Senate as to the meaning of Section 289 and as to its desirability. 77 Cong. Rec. 5530–5532. Senator Black, who was in charge of the legislation, was asked to describe those offenses to which Section 289 applied. That he understood that Section 289 was designed to apply only to those offenses which were not the subject of specific legislation by Congress seems evident from the example which he gave (77 Cong. Rec. 5531–5532):

> For instance, in my State we have a Government reservation. * * * We have in the State a law which prohibits certain practices with reference to driving automobiles which may bring about the death of a person. As I understand, there is no Federal law which would protect the public from the reckless and wanton driving of automobiles on that Government reservation, although there is a highway through it. This bill would adopt the law of the State of Alabama insofar as anything done on the Government reservation is concerned, and would subject a man to prosecution for the reckless killing of a human being on the public highway through the park.

The 1940 Amendment was enacted at the instance of Attorney General Murphy, who also was of the view that Section 289 applied only to those offenses concerning which Congress had not legislated. In 1939, the Attorney General addressed identical letters to the Speaker of the House of Representatives and the Chairman of the Judiciary Committee of the Senate in which he stated, *inter alia:*

> Certain crimes committed on Federal reservations are expressly defined in the Criminal Code. This is true of grave offenses, such as murder, manslaughter, rape, assault, mayhem, robbery, arson, and larceny (U. S. C., title 18, secs. 451–467). The Congress has not, however, legislated as to other crimes committed on Federal reservations, but has provided generally that as to them, the law of the State within which the reservation is situated, shall be applicable (Criminal Code, sec. 289; U. S. C., title 18, sec. 468).

The Attorney General's explanation of the statute was adopted in the committee reports. See H. Rep. No. 1584 and S. Rep. No. 1699, 76th Cong., 3d sess.

B. *The Federal Carnal Knowledge Statute.*— Section 279 of the Criminal Code originated in the act of February 9, 1889, c. 120, 25 Stat. 658, and thus followed by more than sixty years the enactment of the assimilative crimes act. The history of the statute contains nothing indicating

that any consideration was given to the relationship of the proposed legislation to the assimilative crimes act. But it does show that in fixing the age of consent at sixteen years Congress acted with full knowledge of the ages of consent fixed by various state laws and that it thus made an informed choice in fixing the age of consent. The bill as originally passed by the House of Representatives fixed the age at fourteen years. In the Senate the age was raised to sixteen years and the House thereafter concurred in the Senate amendment. 20 Cong. Rec. p. 997. Senator Faulkner, who had charge of the bill in the Senate, explained during the course of a colloquy in that body that (19 Cong. Rec. 6501):

> * * * the age was fixed by the committee after considerable discussion and examination of the laws of several States. Some of the States have changed their laws. A number of the States have fixed the age of sixteen. Some of them have fixed as high as eighteen. Mississippi, Colorado, and Alabama have fixed as high as eighteen.

C. *The Government's Position.*—As we indicated in our memorandum in response to the petition for a writ of certiorari, the sole argument in support of the view of the Government in the court below and of the majority of that court rests upon a literal reading of the assimilative crimes act coupled with a recognition of its underlying policy that, where feasible, it is desirable for

the Government to accommodate its policy in defining crimes to that of the state within whose boundaries federal jurisdiction is to be exercised. The argument runs as follows: The act of carnally knowing a girl over sixteen but under eighteen years of age is not made penal by any law of Congress. Accordingly, the assimilative crimes Act is applicable and reference may be had to state law to determine whether such an act is proscribed by the state. In this case, since petitioner's act would have constituted a state offense if it had occurred within an area of state jurisdiction, it is desirable to recognize the policy of the state and to enforce it in areas of federal jurisdiction within the confines of the state. Such a conclusion obviates the anomaly whereby an act committed in the state of Arizona is criminal or innocent depending upon whether it took place on one side of the boundary line of the Indian Reservation or the other. This does not mean that the congressional policy underlying Section 279 of the Criminal Code is disregarded. Rather, it means that Congress has set the age of sixteen as the minimum, but not the maximum, age of consent for all areas of federal jurisdiction, regardless of whether any particular state may have fixed a lower age. In cases, such as this one, where the girl is over the age of sixteen, the higher age fixed by state law applies. As is evident, this view draws its strength from the fact that it minimizes the area of possible conflict

between the policies of the federal and the state governments, without departing from the language of the assimilative crimes act.

This view, however, runs counter to the congressional intent reflected by the legislative histories of Sections 279 and 289. In respect of the carnal knowledge statute, we know that Congress gave careful consideration to the problem of fixing an age of consent and that it recognized that the age which it fixed differed from the age adopted by some of the states. It is evident that by fixing the age at sixteen Congress not only provided that girls under sixteen were incapable of consenting to the proscribed acts, but inferentially Congress regarded girls sixteen or over as being capable of intelligently consenting to the acts in question. In these circumstances, to say that Geraldine, who had passed her sixteenth birthday, could not consent to petitioner's act because Arizona law made her incapable of consenting is to subordinate the congressional policy to that of the state.

Unless Section 289 of the Criminal Code requires this, there is no basis for so subordinating the Congressional policy. While the assimilative crimes act, as this Court has indicated, is designed to permit the federal government to interfere as little as possible with the policies of the states so far as the punishment of crime is concerned, we are not convinced that Section 289 requires or permits resort to Arizona law in this case. As we have seen, the legislative history of Section 289

shows that Congress intended that there should be resort to state law in respect of those offenses concerning which it did not undertake to legislate specifically. Conversely, as to those offenses which Congress specifically defined and made punishable it did not intend that resort should be had to state law. This seems to have been the view of succeeding Congresses which have brought Section 289 up to date and, as reflected by Attorney General Murphy's letter (*supra*, pp. 16–17) recommending the 1940 amendment, it evidently has been the view of the Department of Justice. Congress, of course, was free to fix policy for areas of federal jurisdiction even though it might conflict with local policy, and we think it has done so in respect of the instant situation. These considerations, we think, outweigh the considerations in support of the judgment of the court below.

Respectfully submitted.

J. HOWARD MCGRATH,
Solicitor General.

THERON L. CAUDLE,
Assistant Attorney General.

W. MARVIN SMITH,
Special Assistant to the Attorney General.

ROBERT S. ERDAHL,
IRVING S. SHAPIRO,
Attorneys.

DECEMBER 1945.

U. S. GOVERNMENT PRINTING OFFICE 1945

p. 5;

SUPREME COURT OF THE UNITED STATES.

No. 123.—October Term, 1945.

Carl B. Williams, Petitioner, *vs.* United States of America.	On Writ of Certiorari to the United States Circuit Court of Appeals for the Ninth Circuit.

[April 1, 1946.]

Mr. Justice Burton delivered the opinion of the Court.

This case turns upon the applicability of the Assimilative Crimes Act, § 289, Criminal Code, 54 Stat. 234, 18 U. S. C. § 468, which reads:

> "Whoever, within the territorial limits of any State, organized Territory, or district, but within or upon any of the places now existing or hereafter reserved or acquired, described in section 272 of the Criminal Code (U. S. C., title 18, sec. 451),[1] shall do or omit the doing of any act or thing which is not made penal by any laws of Congress, but which if committed or omitted within the jurisdiction of the State, Territory, or district in which such place is situated, by the laws thereof in force on February 1, 1940, and remaining in force at the time of the doing or omitting the doing of such act or thing, would be penal, shall be deemed guilty of a like offense and be subject to a like punishment."

The petitioner, a married white man, was convicted in the District Court of the United States for the District of Arizona, of having had sexual intercourse in 1943, within the Colorado River Indian Reservation in Arizona, with an unmarried Indian girl who was then over 16, but under 18, years of age. There was no charge or evidence of use of force by the petitioner or

[1] "Sec. 272. The crimes and offenses defined in this chapter [§§ 272-289, 18 U. S. C. §§ 451-468] shall be punished as herein prescribed:

. . . . . .

"Third. *When committed within or on any lands reserved or acquired for the use of the United States, and under the exclusive or concurrent jurisdiction thereof*, or any place purchased or otherwise acquired by the United States by consent of the legislature of the State in which the same shall be, for the erection of a fort, magazine, arsenal, dock-yard, or other needful building." (Italics supplied.) 35 Stat. 1142, as amended by 54 Stat. 304, 18 U. S. C. § 451.

of lack of consent by the girl. The Circuit Court of Appeals affirmed the judgment by a divided court. We granted certiorari under § 240(a) of the Judicial Code because of the importance of the case in interpreting the Assimilative Crimes Act.

It is not disputed that this Indian reservation is "reserved or acquired for the use of the United States, and under the exclusive or concurrent jurisdiction thereof,"[2] or that it is "Indian country" within the meaning of Rev. Stat. § 2145.[3] This means that many sections of the Federal Criminal Code apply to the reservation, including not only the Assimilative Crimes Act, but also those making penal the offenses of rape,[4] assault with intent to commit rape,[5] having carnal knowledge of a girl,[6] adultery[7] and fornication.[8]

While the laws and courts of the State of Arizona may have jurisdiction over offenses committed on this reservation between persons who are not Indians,[9] the laws and courts of the United

---

[2] See note 1.

[3] "Except as to [certain crimes not material here] . . . the general laws of the United States as to the punishment of crimes committed in any place within the sole and exclusive jurisdiction of the United States, . . . shall extend to the Indian country." Rev. Stat. § 2145, 25 U. S. C. § 217. Donnelly *v.* United States, 228 U. S. 243, 269; Ex parte Crow Dog, 109 U. S. 556; United States *v.* Chavez, 290 U. S. 357; United States *v.* McGowan, 302 U. S. 535; Cohen, Handbook of Federal Indian Law, pp. 5, *et seq.*, and 358, *et seq.*

[4] "Whoever shall commit the crime of rape shall suffer death." Criminal Code, § 278, 35 Stat. 1143, 18 U. S. C. § 457.

[5] "Whoever shall assault another with intent to commit . . . rape, shall be imprisoned not more than twenty years. . . ." Criminal Code, § 276, 35 Stat. 1143, 18 U. S. C. § 455.

[6] "Whoever shall carnally and unlawfully know any female under the age of sixteen years, or shall be accessory to such carnal and unlawful knowledge before the fact, shall, for a first offense, be imprisoned not more than fifteen years, and for a subsequent offense be imprisoned not more than thirty years." Criminal Code, § 279, 35 Stat. 1143, 18 U. S. C. § 458.

[7] ". . . the offenses defined in this chapter [§§ 311-322] shall be punished as hereinafter provided, when committed within any Territory or District, or within or upon any place within the exclusive jurisdiction of the United States." Criminal Code, § 311, 35 Stat. 1148, 18 U. S. C. § 511.

"Whoever shall commit adultery shall be imprisoned not more than three years; . . . and when such act is committed between a married man and a woman who is unmarried, the man shall be deemed guilty of adultery." Criminal Code, § 316, 35 Stat. 1149, 18 U. S. C. § 516.

[8] "If any unmarried man or woman commits fornication, each shall be fined not more than one hundred dollars, or imprisoned not more than six months." Criminal Code, § 318, 35 Stat. 1149, 18 U. S. C. § 518.

[9] People of the State of New York *ex rel.* Ray *v.* Martin, No. 158, decided January 7, 1946; United States *v.* McBratney, 104 U. S. 621; Draper *v.* United States, 164 U. S. 240.

States, rather than those of Arizona, have jurisdiction over offenses committed there, as in this case, by one who is not an Indian against one who is an Indian.[10]

The conviction cannot be sustained under the federal definitions of rape or assault with intent to rape, because the federal crime of rape carries with it the requirement of proof of the use of force by the offender and of an absence of consent by the victim. *Oliver* v. *United States*, 230 Fed. 971. Neither of these elements was charged or proved here. The federal crime of having carnal knowledge of a girl requires proof that she was under 16 years of age at the time of the offense, whereas here the indictment charged merely that she was under 18 and the proof showed that she was between 16 and 18. While the indictment did not state whether or not the petitioner was an Indian or whether or not he was married, the undisputed evidence showed that he was a married white man.

---

[10] Donnelly v. United States, *supra*; United States v. Pelican, 232 U. S. 442; United States v. Ramsey, 271 U. S. 467; United States v. Chavez, *supra*. Cohen, Handbook of Federal Indian Law, pp. 364-365, 146-148. This has not always been as clear as it is now. In 1896, this Court, following United States v. McBratney, *supra*, held, in Draper v. United States, *supra*, that the state courts, and not the federal courts, had jurisdiction over a murder on an Indian reservation in the State of Montana, by one person not an Indian of another not an Indian. The effect of this went so far that in 1902, the Committee on the Judiciary of the House of Representatives reported that, "As the law now stands . . . offenses committed by half-breeds or white persons, whether upon an Indian or other person, are not cognizable by the Federal Courts and generally go unpunished. This state of the law is causing serious conditions of disorder within these Indian reservations." H. R. Rep. No. 2709, 57th Cong., 1st Sess., p. 1. After a cession of jurisdiction by the State and after being memorialized to do so by the legislature of South Dakota, Congress, in 1903, granted jurisdiction specifically to the courts of the United States for the District of South Dakota over actions charging any person with certain major crimes committed within any Indian reservation in that State. 32 Stat. 793; 35 Stat. 1151; 36 Stat. 1167; 18 U. S. C. § 549. This Court, however, in 1913, in Donnelly v. United States, *supra*, at pp. 271-272, said: "Upon full consideration we are satisfied that offenses committed by or against Indians are not within the principle of the *McBratney* and *Draper Cases*. This was in effect held, as to crimes committed *by* the Indians, in the *Kagama Case*, 118 U. S. 375, 383, ... This same reason applies—perhaps *a fortiori*—with respect to crimes committed by white men against the persons or property of the Indian tribes while occupying reservations set apart for the very purpose of segregating them from the whites and others not of Indian blood." We find no material special legislation on this subject affecting Arizona except its Enabling Act. 36 Stat. 568, 572. That Act contains provisions similar to those applicable to Montana, considered in Draper v. United States, *supra*, and to those applicable to New Mexico, considered in United States v. Chavez, *supra*.

However, the offense charged comes within the statutory definition of "rape" in § 43-4901 of the Arizona Code.[11] That section expands the crime of "statutory rape" so as to include sexual intercourse with a girl under 18 instead of merely with a girl under 16. Accordingly, the question here is whether or not the Assimilative Crimes Act makes this section applicable to Indian reservations in Arizona. The question extends not only to the definition of the offense but also to the punishment prescribed. The Arizona Code fixes the punishment for its violation in those instances where violations would not come within § 279 of the Federal Criminal Code. Under those circumstances, on an Indian reservation in Arizona, the statutory punishment, fixed by § 279 of the Federal Criminal Code, for a man, not an Indian, who had carnal knowledge of an Indian girl under 16, would be imprisonment for not more than 15 years for the first offense and not more than 30 years for a subsequent offense, with no minimum sentence specified. On the same facts, except that the girl be between 16 and 18, the punishment, fixed by the Arizona Code, would be imprisonment for life or for any term not less than five years. This would impose a more stringent range of punishment, including the minimum sentence of five years imposed in this

[11] Arizona's definition of rape and the punishment that Arizona prescribes for its commission differ from those relating either to rape or carnal knowledge under the Federal Criminal Code. These differences well illustrate the confusing variations from the definition of a federal crime and from provisions for its punishment which would have to be considered if indictments were permitted under the Assimilative Crimes Act for every act committed within a federal enclave and which might come within a state's enlargement of the federal definition of the same offense. Section 43-4901 of the Arizona Code of 1939 provides:

"Rape is an act of sexual intercourse accomplished with a female, not the wife of the perpetrator, under any of the following circumstances:

"Where the female is under the age of eighteen [18] years;

"Where she is incapable, through lunacy or any other unsoundness of mind, whether temporary or permanent, of giving legal consent;

"Where she resists, but her resistance is overcome by force or violence;

"Where she is prevented from resisting by threats of immediate and great bodily harm, accompanied by apparent power of execution, or by any intoxicating, narcotic, or anaesthetic substance, administered by or with the privity of the accused;

"Where she is at the time unconscious of the nature of the act, and this is known to the accused;

"Where she submits, under a belief that the person committing the act is her husband, and this belief is induced by any artifice, pretense or concealment practiced by the accused, with intent to induce such belief. . . .

"Rape is punishable by imprisonment in the state prison for life or for any term of years not less than five [5]."

case, upon what Congress in its Criminal Code evidently had treated as a lesser offense.

We hold that the Assimilative Crimes Act does not make the Arizona statute applicable in the present case because (1) the precise acts upon which the conviction depends have been made penal by the laws of Congress defining adultery[12] and (2) the offense known to Arizona as that of "statutory rape"[13] has been defined and prohibited by the Federal Criminal Code,[14] and is not to be redefined and enlarged by application to it of the Assimilative Crimes Act. The fact that the definition of this offense as enacted by Congress results in a narrower scope for the offense than that given to it by the State, does not mean that the Congressional definition must give way to the State definition. This is especially clear in the present case because the specified acts which would come within the additional scope given to the offense by the State through its postponement of the age of consent of the victim from 16 to 18 years of age, are completely covered by the federal crimes of adultery or fornication.[15] The interesting legislative history of the Assimilative Crimes Act[16] discloses nothing to indicate that, after Congress has once defined a penal offense, it has authorized such definition to be enlarged by the application to it of a state's definition of it. It has not even been suggested that a conflicting state definition could give a narrower scope to the offense than that given to it by Congress. We believe that, similarly, a conflicting state definition does not enlarge the scope of the offense defined by Congress. The Assimilative Crimes Act has a natural place to fill through its supplementation of the Federal Criminal Code, without giving it the added effect of ~~amending~~ modifying or repealing existing provisions of the Federal Code.

Where offenses have been specifically defined by Congress and the public has been guided by such definitions for many years, it is not natural for Congress by general legislation to amend

[12] See note 7, *supra*.

[13] See note 11, *supra*, and for the use of this designation of the crime in Arizona see Sage *v.* State, 22 Ariz. 151, and Taylor *v.* State of Arizona, 55 Ariz. 29.

[14] See note 6, *supra*.

[15] See notes 7 and 8, *supra*.

[16] See United States *v.* Press Publishing Co., 219 U. S. 1, 10-13, and Johnson *v.* Yellow Cab Co., 321 U. S. 383, 398-401.

such definitions or the punishments prescribed for such offenses, without making clear its intent to do so.[17] On the other hand, it is natural for Congress from time to time, through renewals of the Assimilative Crimes Act, to use local statutes to fill in gaps in the Federal Criminal Code where no action of Congress has been taken to define the missing offenses.

That the attorneys for the Government have recognized the force of some of these considerations is apparent from the following statement at the close of their brief:

> "Congress, of course, was free to fix policy for areas of federal jurisdiction even though it might conflict with local policy, and we think it has done so in respect of the instant situation. These considerations, we think, outweigh the considerations in support of the judgment of the court below."

The first Federal Crimes Act, approved April 30, 1790, 1 Stat. 112, dealt primarily with subjects over which the Constitution had expressly given jurisdiction to the Federal Government. For example, it dealt with treason, crimes upon the high seas and counterfeiting of securities of the United States. In so far as it related to federal enclaves, it recognized and provided punishment for the offenses of "wilful murder" and manslaughter if committed "within any fort, arsenal, dock-yard, magazine, or in any other place or district of country, under the sole and exclusive jurisdiction of the United States." § 3, 1 Stat. 113. It

[17] In Ex parte Crow Dog, 109 U. S. 556, 570-571, Mr. Justice Matthews, writing for the court, said:

"The language of the exception is special and express; the words relied on as a repeal are general and inconclusive. The rule is, *generalia specialibus non derogant*. 'The general principle to be applied', said Bovill, C. J., in Thorpe *v.* Adams, L. R. 6 C. P. 135, 'to the construction of acts of Parliament is that a general act is not to be construed to repeal a previous particular act, unless there is some express reference to the previous legislation on the subject, or unless there is a necessary inconsistency in the two acts standing together.' 'And the reason is,' said Wood, V. C., in Fitzgerald *v.* Champneys, 30 L. J. N. S. Eq. 782; 2 Johns. and Hem. 31-54, 'that the legislature having had its attention directed to a special subject, and having observed all the circumstances of the case and provided for them, does not intend by a general enactment afterwards to derogate from its own act when it makes no special mention of its intention so to do.'"

In Franklin *v.* United States, 216 U. S. 559, 568, in referring to the Assimilative Crimes Act, it was said, "by this act Congress adopted for the government of the designated places, . . . the criminal laws then existing in the several States within which such places were situated, *in so far as said laws were not displaced by specific laws enacted by Congress.*" (Italics supplied.)

contained nothing corresponding directly to the Assimilative Crimes Act.[18]

On February 10, 1823, James Buchanan, then serving his first term in the House of Representatives, clearly stated the need for the recognition of additional federal crimes. He secured the adoption of a Resolution "That the Committee on the Judiciary be instructed to inquire whether there be any, and, if any, what, crimes not now punishable by law, to which punishments ought to be affixed." Annals of Congress, 17th Cong., 2d Sess. (1822-1823) 929.[19]

In the second session of the next Congress,[20] Daniel Webster, Chairman of the Committee of the Judiciary of the House of Representatives, sponsored the bill which became the Federal Crimes Act of March 3, 1825. After extended debate,[21] Congress

[18] Its nearest approach to an Assimilative Crimes Act was in its definition of piracies. It provided in § 8 that "if any person or persons shall commit upon the high seas, or in any river, haven, basin or bay, out of the jurisdiction of any particular state, murder or robbery, or any other offence which if committed within the body of a county, would by the laws of the United States be punishable with death; . . . every such offender shall be deemed, taken and adjudged to be a pirate and felon, and being thereof convicted, shall suffer death; . . . ." 1 Stat. 113. This corresponds to the plan in certain English statutes (e.g. 28 Henry VIII, c. 15 (1536); 33 George III, c. 37 (1798)) for supplementing their Maritime Law with "other offenses" known to the common law. There was no attempt to enlarge the definitions of existing crimes under the Maritime Law by cross reference to broader definitions under the common law. When the Assimilative Crimes Act later appeared in the Federal Criminal Code, it followed this general form of statement.

[19] "In offering this resolution, Mr. B. said, it has been decided that the courts of the United States had no power to punish any act, no matter how criminal in its nature, unless Congress have declared it to be a crime, and annexed a punishment to its perpetration. Offences at the common law, not declared such by acts of Congress, are therefore not within the range of the jurisdiction of the Federal courts. Congress have annexed punishments but to a very few crimes, and those all of an aggravated nature. The consequence is, that a great variety of actions, to which a high degree of moral guilt is attached, and which are punished as crimes at the common law, and by every State in the Union, may be committed with impunity on the high seas, and in any place where Congress has exclusive jurisdiction. To afford an example: An assault and battery, with intent to commit murder, may be perpetrated, either on the high seas, or in a fort, magazine, arsenal, or dock-yard, belonging to the United States, and there exists no law to punish such an offence.

"This is a palpable defect in our system, which requires a remedy; and it is astonishing that none has ever yet been supplied." Annals of Congress, 17th Cong., 2d Sess. (1822-1823) 929.

[20] In its first session, a bill for some assimilation of the criminal laws of the states passed the Senate, but apparently was not acted upon by the House. Annals of Congress, 18th Cong., 1st Sess. (1823-1824) 528, 592, 762. See also, 1 Gales & Seaton, Register of Debates in Congress, 338.

[21] 1 Gales & Seaton, Register of Debates in Congress, 152-158, 335-341, 348-355, 363-365.

expanded the list of enumerated federal crimes. It also added the § 3 which became the basis of the Assimilative Crimes Act of today:

> ". . . if any offence shall be committed in any of the places aforesaid,[22] the punishment of which offence is not specially provided for by any law of the United States, such offence shall, upon a conviction in any court of the United States having cognisance thereof, be liable to, and receive the same punishment as the laws of the state in which such fort, dock-yard, navy-yard, arsenal, armory, or magazine, or other place, ceded as aforesaid, is situated, provide for the like offence when committed within the body of any county of such state." 4 Stat. 115.

This was amended in 1866, 14 Stat. 13, and in 1874 it was incorporated in the Revised Statutes as § 5391 in substantially its then existing form. For many years it thus referred to an "offense" which is not prohibited or the punishment of which "is not specially provided for, by any law of the United States."[23] A similar provision was enacted in 1898 in 30 Stat. 717. In 1909, however, in codifying the Federal Criminal Code, this section was slightly changed when it was incorporated in that Code as § 289 in substantially its present form. The word "offense" was changed so as to avoid the use of it as referring to an action which had not been prohibited and, therefore, technically could not be an "offense." Possibly this change of the old phrase into the phrase "any act or thing which is not made penal by any laws of Congress" led to the present attempt to interpret it in a specific sense as referring to individual acts of the parties rather than in a generic sense referring to acts of a general type or kind. The new words, in the light of the Congressional Com-

---

[22] ". . . any fort, dock-yard, navy-yard, arsenal, armory, or magazine, the site whereof is ceded to, and under the jurisdiction of the United States, or on the site of any lighthouse, or other needful building belonging to the United States . . . ." 4 Stat. 115, § 1.

[23] "If any offense be committed in any place which has been or may hereafter be, ceded to and under the jurisdiction of the United States, which offense is not prohibited, or the punishment thereof is not specially provided for, by any law of the United States, such offense shall be liable to, and receive, the same punishment as the laws of the State in which such place is situated, now in force, provide for the like offense when committed within the jurisdiction of such State; and no subsequent repeal of any such State law shall affect any prosecution for such offense in any court of the United States." Rev. Stat. § 5391.

mittee's explanation of them,[24] cannot, however, be regarded as changing the scope of the Act so substantially as to make it amend and enlarge the definition of an existing federal offense as well as to cover the case where an "offense" had not been prohibited. To do so would be contrary to the expressed purpose of the Committee to continue, rather than to change, its original meaning. In the instant case not only has the generic act been covered by the definition of having carnal knowledge, but the specific acts have been made "penal" by the definition of adultery. The subsequent amendments[25] have been made merely to advance the dates as of which the assimilated local statutes must have been in force. The last amendment, in 1940, followed an explanation of the bill in identical letters from the Attorney General to the Speaker of the House of Representatives and to the Chairman of the Senate Committee on the Judiciary. These letters adopted the view that the Act was to cover crimes on which Congress had not legislated and did not suggest that the Act was to enlarge or otherwise amend definitions of crimes already contained in the Federal Code.[26]

As to the particular offense involved in this case, the legislative history shows an increasing purpose by Congress to cover rape and all related offenses fully with penal legislation. In the Federal Crimes Act of 1825, 4 Stat. 115, rape was prohibited

[24] The Committee's statement as to the new section was:

"Section 5391, Revised Statutes, provides that if any 'offense' be committed, etc., which 'offense' is not prohibited or punished by any law of Congress, such 'offense' shall receive the same punishment as is attached thereto by the law of the State within which the place upon which it is committed is situated.

"An act which is not forbidden by law and to the commission of which no penalty is attached in no legal sense can be denominated an 'offense.' The section has therefore been rewritten so as to correctly express what Congress intended when it enacted the section referred to." H. R. Rep. No. 2, 60th Cong., 1st Sess., p. 25. See also, notes on the decision in the instant case below. 59 Harv. L. Rev. 131; 45 Col. L. Rev. 972; and see United States v. Franklin, 173 Fed. 163, writ of error dismissed, 216 U. S. 559, 568.

[25] 48 Stat. 152; 49 Stat. 394; 54 Stat. 234.

[26] "Certain crimes committed on Federal reservations are expressly defined in the Criminal Code. This is true of grave offenses, such as murder, manslaughter, rape, assault, mayhem, robbery, arson, and larceny (U. S. C., title 18, secs. 451-467). The Congress has not, however, legislated as to other crimes committed on Federal reservations, but has provided generally that as to them, the law of the State within which the reservation is situated, shall be applicable (Criminal Code, sec. 289; U. S. C., title 18, sec. 468)." Quoted in H. Rep. No. 1584, 76th Cong., 3d Sess., p. 2 and S. Rep. No. 1699, 76th Cong., 3d Sess., p. 1.

and made punishable only within certain areas under the admiralty and maritime jurisdiction of the United States. In the same Act, the assimilative crimes section was applied to federal enclaves.[27] It thus provided, the original federal prohibition of such conduct in those areas. If Congress had been satisfied to continue to apply local law to this and related offenses it would have been simple for it to have left the offense to the Assimilative Crimes Act. A contrary intent of Congress has been made obvious. Congress repeatedly has increased its list of specific prohibitions of related offenses and has enlarged the areas within which those prohibitions are applicable. It has covered the field with uniform federal legislation affecting areas within the jurisdiction of Congress.[28]

When Congress thus enacted the statute as to carnal knowledge in 1889 it gave special attention to the age of consent. The House of Representatives fixed the age at 14 and the Senate changed it to 16. 20 Cong. Rec. 997.[29]

For these reasons, we believe that the Assimilative Crimes Act does not make the Arizona Code applicable to the facts of this case. The judgment of the Court of Appeals accordingly is

Reversed.

Mr. Justice RUTLEDGE concurs in the result.

Mr. Justice JACKSON took no part in the consideration or decision of this case.

---

[27] See note 22, *supra*.

[28] Rape: (1825) 4 Stat. 115, applied to the high seas but not to federal enclaves; (1874) Rev. Stat. § 5345 applied to federal enclaves; (1909) 35 Stat. 1143. Assault with intent to commit rape: (1825) 4 Stat. 121, on high seas but not within federal enclaves: (1874) Rev. Stat. § 5346; (1909) 35 Stat. 1143. Carnal knowledge: (1889) 25 Stat. 658, age of consent fixed at 16; (1909) 35 Stat. 1143. Adultery: (1887) 24 Stat. 635, in connection with the amendment of bigamy statutes; (1909) 35 Stat. 1149. Fornication: (1887) 24 Stat. 636, in connection with revision of bigamy statutes; (1909) 35 Stat. 1149. See also, Criminal Code, § 312, obscene literature (1873); § 313, polygamy (1862); § 314, unlawful cohabitation (1882); § 317, incest (1887). 18 U. S. C. §§ 512-517.

[29] Senator Faulkner, in charge of the bill, said: " . . . the age was fixed by the committee after considerable discussion and an examination of the laws of the several States. Some of the States have changed their laws. A number of the States have fixed the age of sixteen. Some of them have fixed as high as eighteen. Mississippi, Colorado, and Alabama have fixed as high as eighteen." 19 Cong. Rec. 6501.